IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

Eric Prudhomme, *et. al*, Individually and on behalf of others similarly situated	Civil Action 15-00098
v.	Judge Robert G. James
GEICO Casualty Insurance Company, *et al.*	Magistrate Judge Carol B. Whitehurst

MOTION FOR PARTIAL SUMMARY JUDGMENT RE: ELVIN JACK CLAIMS OR, IN THE ALTERNATIVE, MOTION TO COMPEL APPRAISAL

Plaintiff Elvin Jack[1] filed a lawsuit alleging he was underpaid on an insurance claim for the total loss of his vehicle following an accident, and that the underpayment was made in bad faith. However, no named Defendant issued an insurance policy to Mr. Jack covering the vehicle when it was allegedly damaged. The insurance policy that insured Mr. Jack's vehicle was issued by a separate entity: GEICO General Insurance Company. Mr. Jack's claims against insurers with which he had no relationship fail and Defendants GEICO Casualty Company (incorrectly named as "GEICO Casualty Insurance Company") and Government Employees Insurance Company (collectively, "Defendants") request this Court grant partial summary judgment in their favor on those claims.

If, however, the Court permits Mr. Jack, either by operation of law or amendment, to proceed against Defendants, even though he has no contract with Defendants, Defendants request the Court stay Mr. Jack's claims and compel him to comply with his insurance policy's mandatory appraisal provision. This Motion is supported by the following Memorandum in Support.

[1] The First Supplemental and Amending Petition for Property Damages, Penalties, Attorney's Fees and for Class Certification (Doc. 20) refers to Mr. Jack as Elvin Jack and Jack Elvin, *Compare* Petition at pp. 1, 4 (referring to "Jack Elvin" or "Mr. Elvin") *with* Petition at pp. 2, 4, 12 (referring to "Elvin Jack"), but Defendants believe his name is Elvin Jack.

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MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE: ELVIN JACK CLAIMS OR, IN THE ALTERNATIVE, MOTION TO COMPEL APPRAISAL

Mr. Jack asserts breach of contract, bad faith and fraud claims based on his allegation that the method used to determine the value of his vehicle did not comply with Louisiana statutory law. Because he has no contract with either named Defendant and neither named Defendant paid (let alone underpaid) his claim, Defendants are entitled to judgment in their favor. If the Court finds summary judgment is not appropriate, the Court should stay Mr. Jack's claims and compel him to participate in an appraisal, despite his refusal to participate, because Defendants timely demanded appraisal of the vehicle's value, as permitted in the policy.

I. FACTS RELEVANT TO THIS MOTION

A. GEICO General Insurance Company Issued Elvin Jack's Policy But Mr. Jack Sued Two Other Insurance Companies

Plaintiff Elvin Jack alleges that on March 4, 2014, his 2000 Ford Ranger V-6 Supercab truck (the "Truck") was involved in an accident. (Defendants' Separate Statement of Facts in Support of Motion for Partial Summary Judgment ("SOF") ¶ 1.) At the time of the accident, the Truck was insured under an insurance policy issued by GEICO General Insurance Company ("GEICO General"), Policy No. 4224-93-93-73, with effective dates from September 21, 2013 to March 21, 2014, (the "Policy"). The Policy created a contractual relationship, dictated by, and subject to, the terms, limits and exclusions of the Policy. SOF ¶ 2. After the alleged accident, Mr. Jack submitted a claim to GEICO General, which determined that the vehicle was a total loss. SOF ¶ 3. GEICO General estimated the value of the vehicle to be $2,733. SOF ¶ 4. Less the $250 deductible and $275 for the value of the salvage retained by Mr. Jack (he kept the total loss vehicle), GEICO General paid Mr. Jack $2,208 on March 6, 2014. SOF ¶ 5.

During GEICO General's consideration of his claim, Mr. Jack noted unhappiness with the payment amount. SOF ¶ 6. GEICO General offered to discuss the claim further and consider additional information Mr. Jack could present, but Mr. Jack declined GEICO General's offer and declined to speak further with GEICO General's Auto Damage Adjuster or Supervisor. SOF ¶ 7.

On March 4, 2015, Plaintiffs filed a First Supplemental and Amending Petition for Property Damages, Penalties, Attorney's Fees and for Class Certification ("Petition") that omitted Tammy Romero (who was listed in the original petition) as a Plaintiff and identified Mr. Jack as a Plaintiff for the first time. SOF ¶ 8. In the Petition, Mr. Jack alleged that his insurance policy was with GEICO Casualty Insurance Company.[2] SOF ¶ 9.[3] For the first time in his Petition, Mr. Jack disputed GEICO General's valuation of the Truck by identifying the NADA valuation as what he believes to be the correct value of the Truck, instead of the value as determined in a CCC Valuescope Value Report. SOF ¶ 10. Mr. Jack's Petition, however, named the wrong insurance company (GEICO Casualty Company, not GEICO General) as the insurer who allegedly undervalued the Truck. SOF ¶ 11. Mr. Jack's Petition also identified Government Employees Insurance Company, and collectively refers to Government Employees Insurance Company and GEICO Casualty Company as "Geico." SOF ¶ 12.

Mr. Jack alleges "Geico" breached its contractual obligation to him by undervaluing the Truck. SOF ¶ 13. Mr. Jack also alleges that "Geico" violated "Louisiana's duty to adjust claims fairly under LSA-R.S. 22:1892 (formerly R.S. 22:658) and/or LSA-R.S.

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[2] The correct name of the entity Mr. Jack referred to is GEICO Casualty Company.

[3] The only other Plaintiff, Eric Prudhomme, alleges that his insurance policy was issued by Government Employees Insurance Company, which is not disputed here. Petition ¶ 8.

22:1973 (formerly R.S. 22:1220)." SOF ¶ 14. Mr. Jack's Petition also references "fraud." SOF ¶ 15.

B. Mr. Jack's Identity Is Not Clear From the Petition

GEICO Casualty Company and Government Employees Insurance Company accepted service of the Petition on March 28, 2015. SOF ¶ 16. The Petition refers to Mr. Jack as both "Jack Elvin" and "Elvin Jack." SOF ¶ 17. On May 4, 2015, GEICO Casualty Company requested clarification from Plaintiffs' counsel and asked for a claim or insurance policy number so it could identify Mr. Jack. SOF ¶ 18. Mr. Jack provided a claim number on May 6, 2015, at which time it became clear that the Policy at issue regarding Mr. Jack's claim was issued by GEICO General, not any of the Defendants named in this lawsuit. SOF ¶ 19.

C. GEICO Casualty Demanded Appraisal But Mr. Jack Refused

The Policy states:

> APPRAISAL
>
> If we and the ***insured*** do not agree on the amount of ***loss***, either may, within 60 days after proof of loss is filed, demand an appraisal of the ***loss***. In that event, we and the ***insured*** will each select a competent appraiser. The appraisers will select competent and disinterested umpire. The appraisers will state separately the ***actual cash value*** and the amount of the ***loss***. If they fail to agree, they will submit the dispute to the umpire. An award in writing of any two will determine the amount of ***loss***. We and the ***insured*** will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and umpire.
>
> We will not waive our rights by any of our acts relating to appraisal.

SOF ¶ 20.[4]

On May 4, 2015, before GEICO Casualty Company could confirm whether it issued the Policy to Mr. Jack, GEICO Casualty Company, on behalf of itself and its affiliates, demanded appraisal of the loss. SOF ¶ 21. On September 14, 2016, GEICO Casualty Company's counsel wrote to Mr. Jack's counsel:

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[4] The proof of loss referred to in the Appraisal clause of the Policy is a "sworn proof of loss including all information we may reasonably require," which must be filed with GEICO General "within 91 days after the *loss*." *Id.* Mr. Jack has not submitted a sworn proof of loss.

> We also spoke about moving forward with the appraisal of Elvin Jack's (or Jack Elvin?) vehicle. We have been waiting for Mr. Jack to name an appraiser. You said he may no longer be participating in this lawsuit. Please let me know if we can move forward with the appraisal or if he will be withdrawing his claim.

SOF ¶ 22. On October 24, 2016, Mr. Jack's counsel responded:

> We heard from Mr. Jack but he does not have the vehicle or his paper work any longer.

SOF ¶ 23.[5] Even though an appraisal can be completed without the vehicle and his paper work, Mr. Jack has refused to cooperate with the appraisal.

II. SUMMARY JUDGMENT AGAINST MR. JACK IS APPROPRIATE BECAUSE THE UNDISPUTED FACTS DO NOT SUPPORT HIS CLAIMS AGAINST EITHER DEFENDANT

When, as here, the evidence in the record shows there is no genuine issue as to any material fact, the Court should award summary judgment to the party entitled to prevail. Fed. R. Civ. P. 56(a). Defendants bear the initial burden of informing the Court of the basis for their motion by identifying portions of the record which highlight the absence of genuine issues of material fact. *Topalian v. Ehrmann*, 954 F.2d 1125, 1132 (5th Cir. 1992). If Defendants can meet the initial burden, as they do here, the burden shifts to the nonmoving party, Mr. Jack, to establish the existence of a genuine issue of material fact for trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994). In evaluating the evidence tendered by the parties, the Court must accept the evidence of the nonmovant as credible and draw all justifiable inferences in its

[5] This case has been stayed pending the outcome of an appeal to the Fifth Circuit of the class certification order in a lawsuit involving similar issues. Doc. 48 (referring to *Cheryl Slade v. Progressive Security Insurance Company*, Fifth Circuit Case No. 15-30010). That decision was entered on May 9, 2017.

favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (1986)).

Mr. Jack's claims are entirely based upon GEICO General's alleged use of a "CCC Valuescope Value" instead of NADA or Kelley Blue Book to determine the value of Mr. Jack's Truck in adjusting his claim under the Policy it issued, which Mr. Jack alleges violated the statute. *See* Petition ¶ 15 (GEICO Casualty Company allegedly "refused to honor the [NADA] evaluation and instead used its own system described as 'CCC Valuescope value'"); ¶¶ 20-21, 37 (use of CCC Valuescope instead of NADA or Kelley Blue Book allegedly breached the Policy, violated the duty to adjust claims fairly under LSA-R.S. 22:1892 (formerly R.S. 22:658) and/or LSA-R.S. 22:1973 (formerly R.S. 22:1220), and "constitute[d] fraud").[6] Defendants are entitled to summary judgment as to Mr. Jack's claims because the undisputed evidence shows neither GEICO Casualty Company nor Government Employees Insurance Company breached a contractual obligation owed to Mr. Jack, violated a statutory duty to adjust claims fairly owed to Mr. Jack, or made a fraudulent statement to Mr. Jack.[7]

A. Defendants Are Separate Entities From GEICO General

GEICO General and Defendants GEICO Casualty Company and Government Employees Insurance Company are separately licensed insurance companies. According to the Louisiana Department of Insurance, GEICO Casualty Company was admitted on July 18, 1983, and has an NAIC number of 41491 and is authorized in fidelity and vehicle insurance lines; GEICO General

[6] Paragraph 37 also mentions "unfair trade practices," but Plaintiffs made clear that they are not asserting a Louisiana Unfair Trade Practices Act claim. *See* Doc. 31 at 12 n.2.

[7] Defendants contend that GEICO General is not liable to Mr. Jack under any of his asserted theories either, but GEICO General's potential liability to Mr. Jack is not relevant for purposes of this motion because Mr. Jack did not sue GEICO General.

was admitted on December 31, 1978, has an NAIC number of 35882, and is authorized in 11 insurance lines; Government Employees Insurance Company was admitted on August 21, 1952 has an NAIC number of 22063, and is authorized in 10 insurance lines. https://www.ldi.la.gov/onlineservices/ActiveCompanySearch/ (last visited 6/26/2017)[8]; *see also Creative Realty Inc. v. HD Supply Waterworks Grp. Inc.*, No. CIV.A. 13-2564, 2014 WL 970165, at *2 (W.D. La. Mar. 12, 2014) ("Courts may take judicial notice of matters of public record.") (citations omitted).

Corporations, even insurance companies, are formally recognized separate legal entities under the laws of Louisiana and the United States and are to be treated as separate legal entities regarding issues like liability. The U.S. Supreme Court affirmed this principle, holding that:

> A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of the *people* (including shareholders, officers, and employees) who are associated with a corporation in one way or another. **When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.** For example, extending Fourth Amendment protection to corporations protects the privacy interests of employees and others associated with the company. Protecting corporations from government seizure of their property without just compensation protects all those who have a stake in the corporations' financial well-being.

Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2768 (2014) (bold added; *italics* in original). Where a plaintiff "did not buy any [insurance] policy from [an insurance company defendant] and so did not suffer any injury due to [that company's] conduct," that plaintiff lacks standing to bring a case for breach of an insurance policy, and this Court lacks jurisdiction over any such claims. *Lee v. American Nat'l Ins. Co.*, 260 F.3d 997, 1001-02 (9th Cir. 2001).

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[8] For "Search Type," select "Name" and enter the name of each insurer to see that entity's licensing information. The information is attached as Exhibit A.

B. Defendants Are Entitled To Summary Judgment On Mr. Jack's Breach Of Contract Claim Because Mr. Jack Did Not Contract With Either Defendant

For his breach of contract claim, Mr. Jack must prove that: (1) Defendants "undertook an obligation to perform;" (2) Defendants "failed to perform the obligation, resulting in a breach;" and (3) the failure to perform resulted in damages to Mr. Jack. *Bruneau v. Crescent City Cleaning Servs. Corp.*, 16-17 (La. App. 5 Cir. 12/14/16), 209 So. 3d 286, 290 (citing *Sanga v. Perdomo*, 14–609 (La. App. 5 Cir. 12/30/14); 167 So.3d 818, 822, *writ denied*, 15–222 (La. 6/19/15); 172 So.3d 650). The issue is the first element. Mr. Jack's breach of contract claims against Defendants fail because Mr. Jack did not have a contract with either GEICO Casualty Company (whom he identifies as the contracting party in the Petition), or Government Employees Insurance Company. SOF ¶ 2.

C. Defendants Are Entitled To Summary Judgment On Mr. Jack's Statutory Claims Because Mr. Jack Is Not An Insured Of Either Defendant

Mr. Jack alleges Defendants violated LSA-R.S. 22:1892(B)(5) by using a CCC Valuescope Value Report to determine the value of his Truck. Petition at ¶¶ 30-32. As a result, according to Mr. Jack, Defendants violated LSA-R.S. 22:1973(A). Petition ¶ 33. Mr. Jack also alleges Defendants violated LSA-R.S. 22:1973(B)(5) "in that more than 60 days have passed since he submitted satisfactory proof of loss to [Defendants] but to date, they have not paid the full amount due under the terms of his insurance contract." Petition at ¶ 34.

Both of Mr. Jack's statutory claims fail because they require a first-party insurer-insured relationship. LSA-R.S. 22:1973(A) codifies an insurer's duty of good faith and fair dealing owed to an insured. By its express language, a claim under this section requires a first-party insurer-insured relationship. LSA-R.S. 22:1973(A) ("An insurer, including but not limited to a foreign line and surplus line insurer, ***owes to his insured*** a duty of good faith and fair dealing.") (emphasis added); *Kelly v. State Farm Fire & Cas. Co.*, 2014-1921 (La. 5/5/15), 169 So. 3d 328, 335 ("Third parties have no cause of action under La. R.S. 22:1973(A)."). LSA-R.S. 22:1973(B)(5) also, "by its express language, applies only to claims due to an insured." LSA-R.S. 22:1973(B)(5) ("Failing to pay the amount of any claim due any ***person insured by the contract*** within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.") (emphasis added); *Smith v. Midland Risk Ins. Co.*, 29,793 (La. App. 2 Cir. 9/24/97), 699 So. 2d 1192, 1197 (holding that a third-party has no cause of action under LSA-R.S. 22:1973(B)(5) because a third-party is not "a person insured by the contract," as required under the statute).

Mr. Jack's statutory claims against Defendants fail because Mr. Jack is not an insured of GEICO Casualty Company (whom he identifies as the contracting party in the Petition), or Government Employees Insurance Company. *See* SOF ¶ 2. These claims also fail because neither Defendant is legally or contractually obligated to adjust or pay another insurer's claim.

D. Defendants Are Entitled To Summary Judgment On Mr. Jack's Fraud Claim Because Neither Defendant Made A False Statement To Mr. Jack

Fraud is defined as "a misrepresentation or a suppression of the truth made with the intention either to obtain an unfair advantage for one party or to cause a loss or inconvenience to the other." LSA-C.C. Art. 1953. Mr. Jack's fraud claim requires him to prove, at least, that: (1) Defendants misrepresented, suppressed or omitted true information; (2) Defendants intended to obtain an unjust advantage or cause damage or inconvenience to him; and (3) the resulting damage related to a circumstance substantially influencing the victim's consent to a cause of the contract a circumstance substantially influencing Mr. Jack's contractual consent. *Shelton v. Standard/700 Associates*, 2001-0587 (La. 10/16/01), 798 So.2d 60, 64.

Mr. Jack's fraud claim is entirely based on GEICO General's alleged misleading statement regarding the value of the Truck. Petition ¶ 37. Thus, Mr. Jack's fraud claim fails because any statement made to him concerning the value of the Truck was made by GEICO General, Mr. Jack's insurer, not either of the named Defendants. *See* SOF ¶¶ 3-5.

E. Defendants Are Entitled To Summary Judgment Because No Evidence Supports Mr. Jack's Claims Against Them

There is no evidence to support any of Mr. Jack's claims against GEICO Casualty Company or Government Employees Insurance Company because neither party insured the underlying claim. Other than a false allegation that GEICO Casualty Company issued his insurance Policy, Mr. Jack has nothing to support his claims. GEICO Casualty Company and Government Employees Insurance Company are entitled to summary judgment on each of Mr. Jack's claims and respectfully request the Court enter judgment in their favor on those claims and dismiss GEICO Casualty Company.[9]

III. THE COURT SHOULD ENTER JUDGMENT IN DEFENDANTS' FAVOR BECAUSE MR. JACK LACKS STANDING TO SUE THEM

To establish standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984). *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 598 (2007). "[T]he plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Where a plaintiff lacks standing to sue, courts lack jurisdiction over the suit. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109-10 (1998).

For the same reasons Mr. Jack's claims against Defendants fail on their merits, Mr. Jack lacks Article III standing to sue Defendants and his claims should be dismissed under Rule

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[9] The insurance policy relevant to the other Plaintiff's (Eric Prudhomme) claim was issued by Government Employees Insurance Company. When judgment is entered against Mr. Jack, no claims against GEICO Casualty Company will remain.

12(b)(1) because the Court lacks subject matter jurisdiction over them.[10] Mr. Jack does not allege an injury fairly traceable to any conduct by either named Defendant, GEICO Casualty Company or Government Employees Insurance Company. Since neither insurer issued the Policy, adjusted his claim, or made payment on his claim, he has no relationship with either entity and lacks standing to sue either entity. For this additional reason, Mr. Jack's claims should be dismissed.[11]

IV. IF THE COURT DOES NOT GRANT SUMMARY JUDGMENT, IT SHOULD STAY MR. JACK'S CLAIMS AND COMPEL HIM TO COMPLY WITH THE POLICY'S MANDATORY APPRAISAL PROVISION

If the Court disagrees that Mr. Jack has no relationship with the Defendants and finds that GEICO Casualty Company is not a stranger to Mr. Jack's Policy, then the Court should hold Mr. Jack to the terms of the Policy and compel him to comply with GEICO's appraisal demand.[12]

Appraisal clauses are enforceable under Louisiana law. *St. Charles Par. Hosp. Serv. Dist. No. 1 v. United Fire & Cas. Co.*, 681 F. Supp. 2d 748, 753 (E.D. La. 2010) (citing cases). Here, the Policy's appraisal clause permits either party to demand appraisal within 60 days after proof of loss is filed, if the parties do not agree on the amount of loss. SOF ¶ 20.

Mr. Jack did not dispute the amount of the loss until he filed his Petition on March 4, 2015. SOF ¶¶ 6-11; *see also Newman v. Lexington Ins. Co.*, No. CIV.A. 06-4668, 2007 WL 1063578, at *3 (E.D. La. Apr. 4, 2007) (holding that a dispute over the amount of loss is a condition precedent to appraisal and that appraisal must be invoked within a reasonable time after a dispute as to the amount of loss arises). The Petition was the first time Mr. Jack offered a controverting value for the Truck. *See* Petition ¶ 14. GEICO Casualty Company and Government Employees Insurance Company accepted service of the Petition on March 28, 2015, which is the first notice they received that the amount of the claim was in dispute – even though neither of them knew that neither entity had issued Mr. Jack's Policy. GEICO Casualty Company, on behalf of itself and its affiliates, timely demanded appraisal on May 4, 2015, within 60 days from when GEICO Casualty received notice that Mr. Jack disputed the value of his claim.

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[10] Courts are "obliged to resolve the standing question as a threshold matter of jurisdiction" and subject matter jurisdiction can never be waived. *Envt'l Conservation Org. v. City of Dallas*, 529 F.3d 519, 525 (5th Cir. 2008) (internal quotations omitted); *Simon v. Wal-Mart Store, Inc.*, 193 F.3d 848, 850 (5th Cir. 1999).

[11] "Standing cannot be acquired through the back door of a class action." *Allee v. Medrano*, 416 U.S. 802, 848 (1974).

[12] The right to demand appraisal really belongs to GEICO General, not either of the Defendants. But if the Court finds by operation of law, or otherwise, that Defendants are parties to the Policy, then they seek to enforce the Policy's appraisal provision.

This Court has the authority to stay proceedings to compel an appraisal. *Phuong Thi Nuguyen v. S. Fid. Ins. Co.*, No. CIV.A. 14-0297, 2014 WL 1276508, at *1 (E.D. La. Mar. 27, 2014); *Newman*, No. CIV.A. 06-4668, 2007 WL 1063578, at *2 (citations omitted). If the Court declines to grant summary judgment for GEICO Casualty Company or Government Employees Insurance Company on Mr. Jack's claims against them, Defendants respectfully request the Court stay proceedings on Mr. Jack's claims and compel him to participate in the Policy's appraisal process because GEICO Casualty Company timely demanded an appraisal 37 days after discovering that Mr. Jack disputed the valuation of his vehicle.

V. **CONCLUSION**

Defendants GEICO Casualty Company and Government Employees Insurance Company respectfully request the Court enter judgment on Mr. Jack's claims because there is no dispute of material fact and Defendants are entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56. If the Court does not enter judgment in Defendants' favor, it should enforce the terms of the Policy and compel Mr. Jack to participate in an appraisal to determine the value of his Truck.

RESPECTFULLY SUBMITTED:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

Eric Prudhomme, *et. al*, Individually and on behalf of others similarly situated	Civil Action 15-00098
v.	Judge Robert G. James
GEICO Casualty Insurance Company, *et al.*	Magistrate Judge Carol B. Whitehurst

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system or by United States Mail, postage prepaid.

/s/Ian Fischer